

General Information Letter: Only the bonus depreciation subtractions allowed on the Form IL-4562 may be taken.

March 7, 2005

Dear:

This is in response to your letter dated December 14, 2004, which was forwarded to me for response. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

In your letter you have stated the following:

This letter is in response to your notice dated December 14, 2004 (a copy of which is attached for your reference) that proposes the elimination of the subtraction modification claimed as "2003 JGTRRA Subtraction".

Please be advised that this subtraction relates to the depreciation on assets where "Federal 50% bonus depreciation" was taken. Based upon a literal reading of the Illinois statute, the only amount of depreciation that is to be an addition modification is the "Federal 30% bonus depreciation". The obvious intent of the statute is to create an addition modification for **both** the Federal 305 and 50% bonus depreciation. Accordingly, we added back the amount of Federal 50% bonus depreciation taken by this taxpayer to reflect that statutory intent.

Our interpretation of the Illinois statute must logically be extended to provide that taxpayers receive a concurring subtraction modification related to the 50% bonus depreciation. The only alternative interpretation would be to ignore **all** modifications – addition or subtraction – related to "50% bonus depreciation – surely this is not intended.

Consequently, the "2003 JGTRRA Subtraction" is the amount of depreciation related to assets where 50% Federal bonus depreciation was taken using the formula detailed in the Illinois statute – except modifying it for the 50% bonus depreciation. We trust that the above explanation will allow you to correct your records to permit the subtraction modification described as "2003 JGTRRA Subtraction". Alternatively, if your office insists that the subtraction is to be disallowed, we would then respectfully request that your office revise and reissue your notice to remove the statutorily connected addition modification related to the Federal 50% bonus depreciation.

## **Response**

Section 203(b)(2)(E-10) of the Illinois Income Tax Act (35 ILCS 5/203) requires corporations (including Subchapter S corporations) to add back to their federal taxable income:

For taxable years 2001 and thereafter, an amount equal to the bonus depreciation deduction (30% of the adjusted basis of the qualified property) taken on the taxpayer's federal income tax return for the taxable year under subsection (k) of Section 168 of the Internal Revenue Code.

Section 168(k)(1)(A) of the Internal Revenue Code allows a bonus depreciation deduction of 30% of the adjusted basis of qualifying property. In 2003, the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27) added subsection (4) to Section 168(k) to provide that, for qualifying property, "paragraph (1)(A) shall be applied by substituting '50 percent' for '30 percent'." The reference in Section 203(b)(2)(E-10) of the Illinois Income Tax Act to 30 percent bonus depreciation taken under Section 168(k) of the Internal Revenue Code expressly requires the add-back of all bonus depreciation deductions allowed under Section 168(k)(1)(A), including deductions computed by substituting "50 percent", because Section 168(k)(1)(A) is the only statute that allows a bonus depreciation deduction and that subsection continues to refer only to 30 percent bonus depreciation.

Section 203(b)(2)(T) of the Illinois Income Tax Act allows a subtraction:

For taxable years 2001 and thereafter, for the taxable year in which the bonus depreciation deduction (30% of the adjusted basis of the qualified property) is taken on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code and for each applicable taxable year thereafter, an amount equal to "x", where:

(1) "y" equals the amount of the depreciation deduction taken for the taxable year on the taxpayer's federal income tax return on property for which the bonus depreciation deduction (30% of the adjusted basis of the qualified property) was taken in any year under subsection (k) of Section 168 of the Internal Revenue Code, but not including the bonus depreciation deduction; and

(2) "x" equals "y" multiplied by 30 and then divided by 70 (or "y" multiplied by 0.429). The aggregate amount deducted under this subparagraph in all taxable years for any one piece of property may not exceed the amount of the bonus depreciation deduction (30% of the adjusted basis of the qualified property) taken on that property on the taxpayer's federal income tax return under subsection (k) of Section 168 of the Internal Revenue Code.

This subsection expressly allows a subtraction of 42.9% of regular depreciation, even in cases where the bonus depreciation deduction was 50%. Unless and until the Illinois Income Tax Act is amended to allow a greater subtraction, the Department cannot allow a greater subtraction. Several bills have been introduced in the General Assembly since the Internal Revenue Code was amended to create this problem, but none has been enacted. The Form IL-4562 and its instructions properly implement the statute as currently in effect, and the additional deduction you claimed must be disallowed.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual

IT-05-0007-GIL

March 7, 2005

Page 3

situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton

Deputy General Counsel – Income Tax